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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,063	02/04/2004	Murray S. Toas	D0932-00447	5057
8933	7590	12/06/2005	EXAMINER	
DUANE MORRIS, LLP IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			MATZEK, MATTHEW D	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/772,063

Applicant(s)

TOAS ET AL.

Examiner

Matthew D. Matzek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-17 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-17 and 38-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. In the Office Action dated 10/25/2005 Examiner incorrectly asserted that the polymeric antifungal agent is taught to be in concentrations of less than 200 ppm. In the applied reference of Toreki et al. (WO 2004/086770) the combination of the DADMAC monomer and polyDADMAC serves as the antifungal agent, not the sodium persulfate as asserted by Examiner. Therefore the rejection of claims 1-10, 12-17, and 38-41 under 35 U.S.C. § 103 (a) as being obvious over Fay et al. (US 2004/018524) in view of Toreki et al. (WO 2004/076770) has been withdrawn. New grounds of rejection are as follows.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-10, 12-17, and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fay et al. (US 2004/0185204) and further in view of Gaglani et al. (US 2005/0049224) and as evidenced by Furnacecompare.com and Progress-energy.com.

a. Fay et al. teach a fungi-growth inhibiting facing of a building insulation assembly including a central field portion (Abstract). The central field portion may comprise randomly oriented, entangled, glass fibers that are bound by an adhesive binder [0031]. The insulation may be faced with kraft paper with a basis weight of 30 to 40 pounds/3000 ft<sup>2</sup> [0002]. The kraft paper facing may comprise a fungicide, biocide and pesticide and may be adhered via a bituminous adhesive [0007].

- b. The biocide disclosed by Fay et al. is silver zeolyte, which is commonly used in protecting food packages through its release of silver and is sold as KATHON®, by ROHM AND HAAS®, a biocide fungi-growth inhibiting agent designed for insulation articles [0047]. As it is commonly used in protecting food packages the said biocide is presumed to be nontoxic and noncarcinogenic to humans and does not present significant toxic residue.
- c. The article of Fay et al. is necessarily heat resistant to temperatures of 250 °F and molten bituminous adhesive as the applied reference teaches the application of bituminous adhesive to adhere the kraft paper facing to the insulation. Claim 16 is rejected as the bituminous layer may function as a vapor barrier [0050].
- d. With regards to the claimed R-values of claim 8, these values are consistent with those of common fiberglass insulation articles known in the art, as evidenced by Furnacecompare.com. It is further noted that insulation capability (R-value) is generally given on a per inch basis and a final R-value is calculated by multiplying the R-value per inch by the total thickness of the insulation. Fiberglass batts have an average R-value of 3.25 per inch and are known to have total R-values up to 30 as evidenced by Progressive-energy.com. Fay et al. disclose a fiberglass insulation comprising fiberglass, binder and biocide, but are silent as to the R-values of said invention. It is reasonable, however to presume that since the prior art meets the physical and chemical limitation of fiberglass batts and the body of the claim the said featured property is inherent to said insulation article thus providing the present invention the desired physical properties. This is

further evidenced by the websites provided and prior Office Actions and provided along with the instant Action.

e. The publication of Fay et al. is silent as to the application of an antifungal/antimicrobial agent in the amount of less than 200 ppm in the cellulosic facing by weight of said facing.

f. Gaglani et al. teach a synergistic antimicrobial composition which comprises a mixture of an iodopropynyl compound and a dimethyldithiocarbamate compound (Abstract). The antimicrobial composition may be used in building materials and coating formulations [0005]. The applied invention may be used in powder form, as wettable powders, or dispersions in a polymeric matrix [0022]. Depending on the final product to be protected the antimicrobial compositions of the applied invention may range from 0.004% to 2.0% (40ppm to 20000ppm) [0018]. This anticipates an antimicrobial level of less than 200ppm.

g. Since Fay et al. and Gaglani et al. are from the same field of endeavor, antimicrobial building materials, the purpose disclosed by Gaglani, et al. would have been recognized in the pertinent art of Fay et al.

h. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the insulative article of Fay, et al. with a kraft paper facing at the biocide at the level disclosed by Gaglani, et al. motivated by the desire to successfully create a microbial and fungicidal resistant insulative article that will maintain its integrity for an extended period of time, will not have any adverse effect on

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health or the environment and will meet the economic restraints of the specific application [0009 Gaglani et al.].

i. It should be noted that optimizing the amount or type of biocide included in the insulation article or restraining its content within set values are result effective variables. For example, manipulating the quantity of antifungal/ antimicrobial agent on the cellulosic facing to attain a predetermined value or be in accordance with a standard/test. Biocide/fungicide selection is also a result effective variable. Therefore, it would have been obvious for a person having ordinary skill in the art at the time the invention was made to have made the Fay et al. invention to contain a antifungal/antimicrobial level able to pass ASTM C1338, ASTM D-2020, TAPPI Test T487, or a combination thereof.

*In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423.

The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm

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NORCA TORRES  
PRIMARY EXAMINER